Rule 407. Subsequent remedial measures.

When, after an injury or harm allegedly caused by an event, measures are taken ~~which~~ that, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, ~~or~~ culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. ~~in connection with the event.~~ This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Advisory Committee Note

These amendments conform to amendments made to the Federal Rule in 1997, and the rule is now the Federal Rule, verbatim.

Notes of Federal Advisory Committee on Rules - 1997 Amendment

The amendment to Rule 407 makes two changes in the rule. First, the words "an injury or harm allegedly caused by" were added to clarify that the rule applies only to changes made after the occurrence that produced the damages giving rise to the action. Evidence of measures taken by the defendant prior to the "event" causing "injury or harm" do not fall within the exclusionary scope of Rule 407 even if they occurred after the manufacture or design of the product. See Chase v. General Motors Corp., 856 F.2d 17, 21-22 (4th Cir. 1988).

Second, Rule 407 has been amended to provide that evidence of subsequent remedial measures may not be used to prove "a defect in a product or its design, or that a warning or instruction should have accompanied a product." This amendment adopts the view of a majority of the circuits that have interpreted Rule 407 to apply to products liability actions. See Raymond v. Raymond Corp., 938 F.2d 1518, 1522 (1st Cir. 1991); In re Joint Eastern District and Southern District Asbestos Litigation v. Armstrong World Industries, Inc., 995 F.2d 343 (2d Cir. 1993); Cann v. Ford Motor Co., 658 F.2d 54, 60 (2d Cir. 1981), cert. denied, 456 U.S. 960 (1982); Kelly v. Crown Equipment Co., 970 F.2d 1273, 1275 (3d Cir. 1992); Werner v. Upjohn, Inc., 628 F.2d 848 (4th Cir. 1980), cert. denied, 449 U.S. 1080 (1981); Grenada Steel Industries, Inc. v. Alabama Oxygen Co., Inc., 695 F.2d 883 (5th Cir. 1983); Bauman v. Volkswagenwerk Aktiengesellschaft, 621 F.2d 230, 232 (6th Cir. 1980); Flaminio v. Honda Motor Company, Ltd., 733 F.2d 463, 469 (7th Cir. 1984); Gauthier v. AMF, Inc., 788 F.2d 634, 636-37 (9th Cir. 1986).

Although this amendment adopts a uniform federal rule, it should be noted that evidence of subsequent remedial measures may be admissible pursuant to the second sentence of Rule 407.

Evidence of subsequent measures that is not barred by Rule 407 may still be subject to exclusion on Rule 403 grounds when the dangers of prejudice or confusion substantially outweigh the probative value of the evidence.

GAP Report on Rule 407.

The words "injury or harm" were substituted for the word "event" in line 3. The stylization changes in the second sentence of the rule were eliminated. The words "causing 'injury or harm' " were added to the Committee Note.